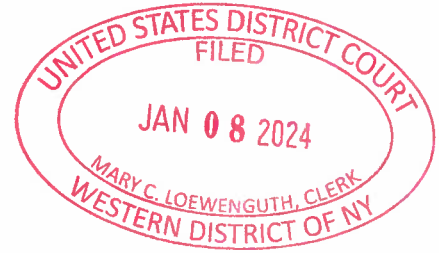


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

21-CR-138 (JLS) (HKS)

NADER NGOOPOS,

Defendant.

DECISION AND ORDER

Defendant Nader Ngoopos, along with two codefendants, is charged with various crimes in a Superseding Indictment returned on July 27, 2022. *See* Dkt. 38. The case has been referred to United States Magistrate Judge H. Kenneth Schroeder, Jr. to hear and determine, and report and recommend on, all pre-trial proceedings under 28 U.S.C. §§ 636(b)(1)(A) and (B). *See* Dkt. 4.

Before the Court are the outstanding aspects of Ngoopos's omnibus pretrial motion, which was filed on March 17, 2023. *See* Dkt. 78. Ngoopos requests (1) suppression of evidence seized pursuant to certain search warrants and during a vehicle police stop; (2) a hearing regarding photo array identification procedures; and (3) dismissal of the Superseding Indictment to the extent it contains charges that are multiplicitous, duplicitous, or invalid as a matter of law. *See id.*

On April 5, 2023, the Government responded in opposition and cross-moved for reciprocal discovery. Dkt. 92. On May 10, 2023, Judge Schroeder heard argument and, thereafter, issued an order "granting in part and denying in part"

the “Omnibus Discovery Motion” as to Ngoopos. *See* Dkt. 100. He reserved decision, however, on the three issues set forth above.

On November 3, 2023, Judge Schroeder issued a Report, Recommendation and Order (“R&R”) addressing the outstanding issues. Dkt. 125. In particular, he denied Ngoopos’s request for a hearing relating to the photo array identification procedures and recommended that this Court deny Ngoopos’s motions to dismiss and to suppress. *Id.*

Ngoopos then appealed from, and objected to, the R&R. Dkt. 127, 132, 133. Ngoopos argues, among other things, that Judge Schroeder improperly declined to address Ngoopos’s arguments pertaining to search warrants other than three specific warrants identified in the R&R. *See* Dkt. 133 at 2-4.¹ Ngoopos further argues that the R&R’s conclusions as to the remaining issues—including suppression of evidence seized during a vehicle stop, dismissal of charges in the Superseding indictment, and denial of a hearing—are erroneous for various reasons. *See id.* at 4-14. The Government responded in opposition on December 18, 2023, Dkt. 136, and Ngoopos replied on December 27, 2023. Dkt. 142.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s

¹ The R&R states that, “[a]lthough defense counsel has listed a number of search warrants in his moving papers,” the Court “is not obligated to” and “will not” address any search warrants other than three enumerated warrants because Ngoopos “has only provided an affidavit based on his personal expectation of privacy” as to those warrants. *See* Dkt. 125 at 3.

recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). As for non-dispositive matters, the district judge reviews appeals of a magistrate judge's order under a clearly erroneous or contrary to law standard. Fed. R. Crim. P. 59(a). *See also United States v. Kelly*, No. 18-CR-217-A, 2021 WL 1920777, at *2 (W.D.N.Y. May 13, 2021) (reviewing non-dispositive orders denying motions for disclosure of certain information under a clearly erroneous or contrary to law standard of review).

This Court has reviewed the R&R, the objections briefing, and the relevant record. Based on that review, this Court accepts and adopts the R&R. As such, Ngoopos's motions to suppress and to dismiss are DENIED. The order is otherwise AFFIRMED.

SO ORDERED.

Dated: January 8, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE